

No. 11947

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

COMMERCIAL WHOLESALERS, INC., a corporation,
Appellant,

vs.

INVESTORS COMMERCIAL CORPORATION,
Appellee.

APPELLEE'S SUPPLEMENTAL BRIEF

CATLIN & CATLIN,
FRANK D. CATLIN,
HENRY W. CATLIN,
433 South Spring Street, Los Angeles 13,
Attorneys for Investors Commercial Corporation,
Appellee.

FILED
SEP 10 1948

PAUL P. O'BRIEN, -

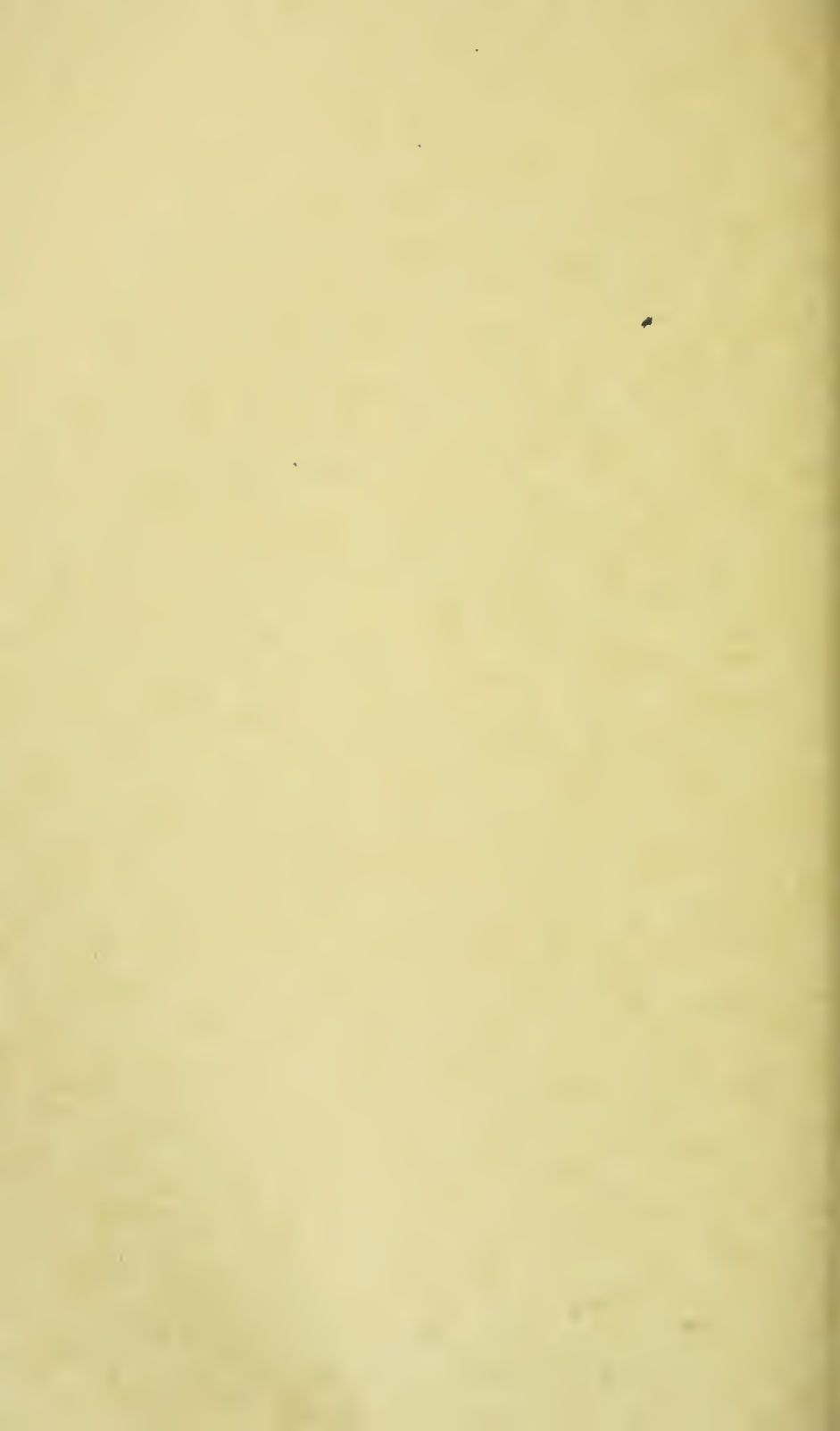


TABLE OF AUTHORITIES CITED

CASES

PAGE

Mitchell, John, Bankrupt, 54 A. B. R. 476.....	3a
Potasch Bros. Co. Inc., Bankrupt, 79 F. (2d) 613, 30 A. B. R. (N. S.) 225.....	3a

STATUTES

Bankruptcy Act, General Order 12(1).....	3
Bankruptcy Act, Sec. 38.....	3
Local Bankruptcy Rules of the District Court of the United States, Southern District of California:	
Rule 207(b)	3
Rule 208(a)	3

TEXTBOOKS

2 Collier on Bankruptcy (14th Ed.), p. 1426.....	3a
--	----

No. 11947

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

COMMERCIAL WHOLESALERS, INC., a corporation,

Appellant,

vs.

INVESTORS COMMERCIAL CORPORATION,

Appellee.

APPELLEE'S SUPPLEMENTAL BRIEF

Investors Commercial Corporation, Appellee, files its supplemental brief, which takes the place of page 3 of its original brief for the reason that some citations were inadvertently omitted and respectfully requests that said supplemental brief may be used with and in connection with Appellee's original brief heretofore filed.

Section 38 of said Bankruptcy Act provides for the jurisdiction of referees as follows:

“Referees are hereby invested, subject always to a review by the judge with jurisdiction to (Subsection 6) perform such of the duties as are by this act conferred on courts of bankruptcy including those incidental to ancillary jurisdiction and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided.”

Rule 207(b) of the Local Bankruptcy Rules of the District Court of the United States, Southern District of California, provides:

“The authority of a referee to whom a case has been referred by an order of general reference shall not terminate when the case is concluded before him but shall continue so long as he remains in office, unless the reference to him is expressly revoked.”

Rule 208(a) of the Local Bankruptcy Rules of the District Court of the United States, Southern District of California, as amended September 15, 1947, provides:

“A petition to reopen a closed estate shall be filed with, heard by, and ruled upon by the Referee to whom the case in question was last referred, if he is still in office and if the reference to him has not been expressly revoked; otherwise such petition shall be filed with the Clerk and the case shall thereupon be re-referred to a referee who shall hear and rule upon the petition to reopen the estate.”

General Order 12(1) of the present Bankruptcy Act, as amended, likewise provides that:

“A copy of the order referring a proceeding to a Referee shall forthwith be sent by mail to the Ref-

eree, or be delivered to him personally by the clerk or other officer of the court. *And thereafter all the proceedings, except such as are required by the Act or by these general orders to be had before the judge, shall be had before the referee.*" (Emphasis supplied.)

"A referee in bankruptcy, after reference, can do anything that a judge can do, except adjudicate voluntary petitions; commit for contempt, hear jury trial when demanded; extradite a bankrupt; enjoin a court; transfer cases; and designate newspapers. There is doubt whether a referee can reopen closed cases. The better view is that he cannot. *However a local District Rule gives the referee jurisdiction to reopen cases.*" (Emphasis supplied.)

John Mitchell, Bankrupt, 54 A. B. R. 476, 478

"Although there has been considerable authority that a referee, once having made an order, has no power to reconsider and amend or vacate it, *the better view seems to be that the referee, as a court, has such power.*" (Emphasis supplied.)

Vol. 2, Collier on Bankruptcy, 14 Ed. page 1426.

The same question was up before the United States Circuit Court of Appeals (Second Circuit) in 1935 in the matter of *Potasch Bros. Co. Inc., Bankrupt*, 79 F. (2d) 613, 30 A. B. R. (N. S. 225, 231), and Judge L. Hand

Respectfully submitted,

CATLIN & CATLIN,
FRANK D. CATLIN,
HENRY W. CATLIN,

*Attorneys for Investors Commercial Corporation,
Appellee.*